



Professionalism in Law Office Management –  
Intermediate Level Trust Account Issues,  
Signing for Other People and Mental Wellness  
as a Hallmark of Professionalism

Presentation to Southern Land Title Association  
Seminar by Matt Mashburn

*"We remember what we understand; we understand only what we pay attention to; we pay attention to what we want." - Edward Bolles*

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## Why should we aspire to Professionalism in Law Office Management?

1. The difference between Ethics and Professionalism. See *King v. State*, 262 Ga. 477, 421 S.E.2d 708, 709 (1992), Benham J., concurring. (“Recently, in commenting on the need for professionalism, Chief Justice Clark said, ‘Ethics is that which is required and professionalism is that which is expected.’”).
  2. The difference between “following the Rules” and Ethics & Professionalism. See *Allen v. Lefkoff, Duncan, Grimes & Dermer, P.C.*, 265 Ga. 374, 453 S.E.2d 719 (1995), Benham, J., concurring. (“While I applaud the desire of this court to clear up perceived confusion in the trial of legal malpractice cases and agree with the disallowance of ethical violations as a basis for malpractice actions, I must sound a note of caution with regard to our holding that ethical rules are relevant to the standard of care in legal malpractice actions.”).
  3. The difference between ethically supervising your staff and running your law office like a Professional.
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What are the Characteristics exhibited by a Professional?

Honesty.

Trustworthiness.

Truthfulness.

Integrity.

Fairness.

Civility.

See *King v. State*, 262 Ga. 477, 421 S.E.2d 708, 709 (1992), Benham J., concurring. (Professionalism comes when one realizes that all of the problems encountered in a closing practice cannot be solved by passing laws, rules or regulations).

See “A Lawyer’s Creed” or The Aspirational Statement on Professionalism,

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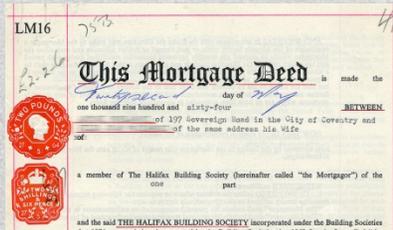
A Professional also has a client, who is either a human or the authority of which can be traced to a direct grant from one or more humans.

A Professional can not represent a “Closing” any more than a Professional could represent the Tree that Owns Itself or a Sidewalk. Or a Swing set. Or a Porch. Or a Deed. Or a Stapler.



How would a “Closing” execute an engagement letter?  
How would a “Closing” write a check?

People will fight me as to whether it’s ethical; but nobody can seriously argue with a straight face that it’s professional.





Hypothetical Number 1:

Attorney's Spouse is the office financial manager.

Spouse has an undergraduate accounting degree and an MBA.

Prior to working with Attorney's firm, Spouse worked for seven years at a Bank.

The Bank also held the law firm's IOLTA and operating accounts.

Attorney and Spouse also opened a coffee shop for which Spouse handled all of the operations.

Attorney and Spouse held monthly meetings to review the Firm's account reconciliations; but the Spouse presented altered bank statements to remove the fact that Spouse had been stealing money out of the IOLTA account and diverting the proceeds to the coffee shop.

In addition, Spouse created an automatic overdraft protection so that overdrafts were covered and no notices of overdrafts went to the State Bar's Trust Account Overdraft Notification Coordinator.

After a late payoff, the Firm's title insurance company performed an audit and discovered that the IOLTA account had been overdrawn 50 times.

In all, Spouse managed to steal over \$2.3 million dollars from the IOLTA Trust Account.

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Is this ethical? It was not as unethical as the Bar's investigator thought.

Is this professional? No. **See, Creed, Lines 1-5**

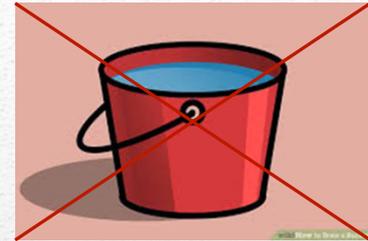
Response: The attorney is ethically responsible for the account. **If the Attorney is aspiring to reflect professionalism, the Attorney should not only know how to reconcile the accounts, the Attorney should be an active participant in all aspects of the operation of the account.**

See *In re Michael Anthony Eddings* S16Y0825 (December 15, 2016) (“...we agree that [Attorney] violated Rules 1.15(I)(c) and 1.15(II)(b)...”) Attorney given public reprimand, required to accept services of State Bar's Law Practice Management Section, required to take and pass the next available MPRE and to make restitution of losses not covered by title insurance within five years (failure of any of which might subject the Attorney to additional discipline).

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## IOLTA Trust Account Basics

What is an IOLTA account and what are its characteristics?



A segregated account for the purpose of holding money received **in trust**.

Short term account (don't put long term escrow money in your IOLTA closing account).

Each and every single closing within the IOLTA should balance to zero (there should be no "excess" in your IOLTA trust account and for goodness sake there should not be a "deficit.").

The interest on the IOLTA account goes to the Georgia Bar Foundation.

Participation in the IOLTA program is mandatory.

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## Trust Account Basics (continued)

### Setting up the Account

Use only an “approved institution” (i.e one that has agreed to operate in according with the Bar’s IOLTA rules). Not every bank is an approved institution.

\*Practice Note: If I try to set up an IOLTA account and the business services officer knows less than I do, I will ask for their supervisor or go to another bank.

If your Law Firm’s policies and procedures allow, you may have more than one IOLTA account and you may have IOLTA accounts at more than one Bank.

There is no requirement that the signer be a lawyer. (A Professional would say “What, are you, crazy?!”). Can you see the difference between Professionalism versus the minimum of what is required here?

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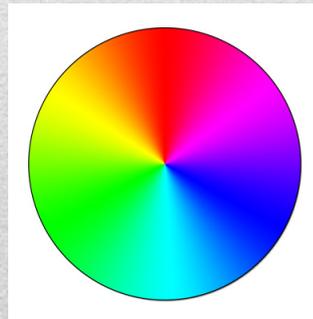
## Receiving and Disbursing from a Trust Account

Moving other people's money around safely, accurately and leaving a paper trail.

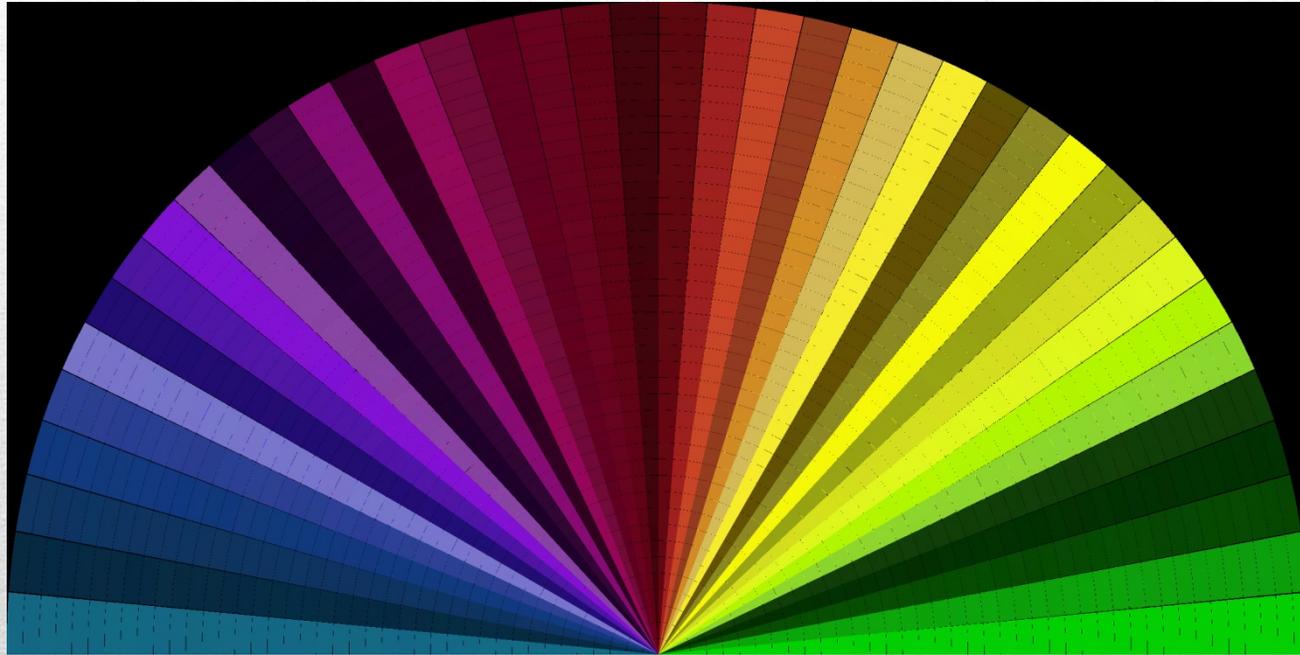


Our first efforts were to eliminate the thinking that an IOLTA account is “one bucket” full of fungible dollars.

We're seeing your trust accounts start to show separation; but it's still a little fuzzy.



What your Trust Account **SHOULD** look like



Each Closing or Each Matter within the Trust Account  
is in its own column with no crossover to any other Closing or Matter

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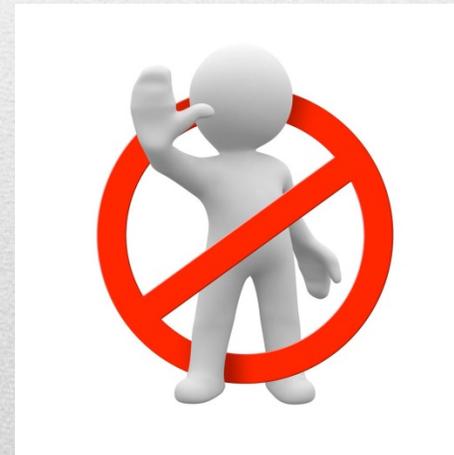


You are responsible for the funds from the second you accept the funds to the second that you properly disburse the funds (but only if you properly disburse the funds).

Transfer funds to your Firm's operating account as soon as the fees are earned, but leave a trail showing conclusively the date, the amount and the reason that the funds were transferred. *In the Matter of Shanina Nashae Lank*, S16Y0723, S16Y0724, S16Y0725 (January 23, 2017)(...the \$59.88 item that presented against insufficient funds in her attorney trust account was a re-occurring renewal payment for the law firm's website hosting services...) *Id.* at 4. Why was this lawyer drawing website hosting fees out of a trust account?

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DO **NOT** UNDER ANY CIRCUMSTANCES EVER  
WITHDRAW MONEY FROM AN IOLTA ACCOUNT USING  
AN ATM.



IN FACT, DON'T EVEN GET AN ATM CARD OR ANY  
OTHER KIND OF CARD FOR AN IOLTA ACCOUNT.

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- An Honest lawyer does not steal from a trust account.
  - An Ethical lawyer does not allow others to steal from a trust account.
  - A Professional knows how to do the job of every person who touches the lawyer's trust account and not only exercises general supervision of the trust account but is aware of every aspect of the trust account's operation.

# Professionalism

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## Practical Tips for Trust Account Safety

1. Have your bank require an actual signature before any outgoing wire is sent unless you, yourself, are the one initiating the wire. (I know that some of you have the ability to wire from your desktop). **Professionalism Aspiration**, not an ethical duty.
  2. Don't ever, ever, ever, ever, ever use a signature stamp. Ever. **Professionalism Aspiration/Tip**, not an ethical duty.
  3. Don't ever, ever, ever, ever, ever sign a blank check. **Professionalism Aspiration/Tip**, not an ethical duty.
  4. Breaks in check numbers don't always mean that a check is uncashed, sometimes it means that somebody stole checks from the back of your checkbook. **Professionalism tip**, not an ethical duty.
  5. Be very, very suspicious of payoff checks where the endorsement on the back shows an account number and nothing else. **Professionalism tip**, not an ethical duty.
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**Professionalism Tips** (Continued), none of these are REQUIRED by the ethics rules.

5. Bank statements and correspondence regarding the trust account should be periodically opened by someone other than the bookkeeper.
6. The person who is the most indignant about you asking questions is probably the most likely to be stealing from you.
7. Be curious, ask questions, check statements, look at the check register.
8. Title company auditors report that the most likely person to be embezzling from trust accounts is the person who is “the most trusted employee in the Firm.”





## Mashburn goes from Preaching to Meddling.

Remember, this is a Professionalism Hour  
We're aspiring to do better than just the minimum

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When is it ok to sign someone else's name?



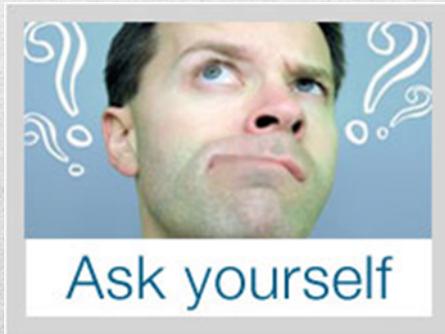
# Never

Not on any document that you want me to insure or any document that provides authority for any document that you want me to insure.

Let's don't worry about the past for a moment, let's worry about doing it right going forward.



- Where does the second witness at a “witness only closing” come from?



Rule 8.4(a)(4): “It shall be a violation of the Georgia Rules of Professional Conduct for a lawyer to...engage in professional conduct involving dishonesty, fraud, deceit[,] or misrepresentation.”

Creed – Lines 51 and 53.

# More information - Witness

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Professionals are the ones who exercise voluntary restraint, self-regulation, self-awareness and have a grasp of The Greater “Why?” Mashburn, *Professionalism in Law Office Management* (2017).

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# Professionalism

## TOPIC TWO

MENTAL WELLNESS AS  
AN ETHICAL DUTY AND  
A HALLMARK OF  
PROFESSIONALISM

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# Is there a Problem?

21 percent of licensed, employed lawyers qualify as problem drinkers.

For lawyers under age 30, its 31.9 percent.

By comparison only 6.8 percent of the adult population as a whole has a drinking problem.

Lawyers have twice the rate of problem drinking than among surgeons.

Krill, Johnson & Albert, The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys, *Journal of Addiction Medicine* (February, 2016)

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# Professionalism

Fact Pattern # 5.

An Assistant District Attorney overheard a Criminal Defendant's Attorney on a telephone call in the courthouse men's restroom apparently attempting to purchase controlled substances for himself.

The telephone call was on the afternoon before the beginning of a jury trial.

The ADA brought the Attorney's behavior to the attention of the presiding judge.

The next morning, the Attorney appeared in court for jury selection but seemed to be under the influence of a controlled substance.

The Attorney had bloodshot eyes and welts and bruises on his face.

The Attorney fell asleep at counsel's table.

The Court held the attorney in contempt and imposed jail time to be immediately served.

The Attorney failed to refund the unearned portion of the retainer paid to the Attorney by the client.

Disbarred. Multiple offenses and a pattern of misconduct. Failed to timely respond.

*In re Ricky W. Morris, Jr.*, S17Y1329 (January 29, 2018). See also Creed, **Lines 13-15**.

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- His Meth Conviction Upheld, Disbarred Lawyer Thanks Judge, DA for Intervention Fulton County Daily Report, July 3, 2018. See also, In re: Rand J. Csehy, 296 Ga. 492 (2015).
- The Court of Appeals upheld the conviction of former prosecutor and criminal defense lawyer Rand Csehy, who was charged with possession of meth after a judge ordered him to take a urine test when he appeared unsteady and disheveled in court.

**What would YOU do?**

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**“Mental Wellness as a Professionalism Issue rather than an Ethical Issue”**

The Special Master found that Attorney’s behavior was proof of an ongoing mental health issue.

The Special Master found that if the Attorney were not mentally ill, the Special Master would recommend disbarment.

The Special Master recommended one year suspension minimum with conditions.

The Review Panel recommended two year suspension minimum with conditions.

Attorney disavowed any mental illness.

Georgia Supreme Court: “With all of the outrageous conduct throughout this disciplinary process, it is easy to forget what this case is about: dishonesty.”

Thus, LYING was an ETHICAL BREACH; but there is no doubt that the behavior was a Professionalism breach. **Creed, Lines 2-5, 64-66.** Did the lawyer witnesses comply with their professional obligations to the client and the public and the lawyer (**Creed, Lines 13-15**) or did they just “not lie”?

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**Remember that true professionals know when to ask for help and delegate responsibility.** Be familiar with the resources available to you - be they personal or professional - and utilize them. If you feel you are constantly "stressed out," depressed, or struggling with substance abuse/dependence issues, get professional help immediately. **Just as any psychologist would consult an attorney when addressing legal issues outside of their area of expertise,** so too, an attorney should be prepared to consult a mental health worker if a lawyer feels ill-equipped to address the psychological stressors in the lawyer's life. Latham, The Depressed Lawyer, *Psychology Today*, May 2, 2011 (emphasis added)



Psychiatrist Drafting a Deed

While the image of “A Psychiatrist drafting a Deed” might be silly, the consequences of an attorney attempting to “heal thyself” could be devastating, even deadly.

Consider that you have an ethical duty to seek help when you are in a crisis; but a Professional seeks out help before there is a crisis.

You’ve already paid for six sessions. Why not get your money’s worth? If you wait until you’re thirsty to take a drink of water...



You’re already dehydrated.

- We have an Ethical Duty to ourselves. We have a Professional Obligation for each other.
- “To my colleagues in the practice of law, I offer concern for your welfare.” **Chief Justice’s Commission on Professionalism’s “A Lawyer’s Creed.”**
- “What could have helped?...I still wish for that chance to try.” Barclay, The Importance of Lawyers Abandoning the Shame and Stigma of Mental Illness *Georgia State Bar Journal*, June, 2018 p. 79.



# Kind-hearted listening

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# The State Bar of Georgia Wellness Program

<https://www.gabar.org/wellness/about.cfm>

The Wellness Program has four major parts:

Lawyer Assistance Program

Suicide Awareness Campaign

SOLACE | Support of Lawyers, All Concern Encouraged

Law Practice Management

All of them are free, all of them are confidential.

While it's too early to have a cite to a Bar Complaint where participation in the Wellness Program was cited as a positive, mitigating factor, doesn't it make sense that one would rather be the one who sought help than one who didn't?

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## Additional Resources:

### Helping Others:

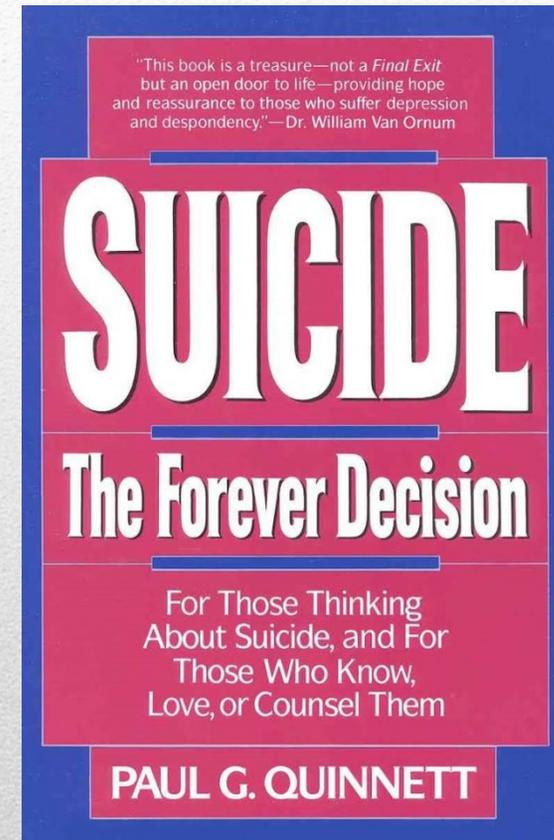
Quinnett, *Suicide The Forever Decision* Crossroad Publishing Company (1992).

### Helping Ourselves:

Blauner, *How I Stayed Alive When My Brain was Trying to Kill Me: One Person's Guide to Suicide Prevention* William Morrow Paperbacks (2003).

### Understanding the Issues:

Joiner, *Why People Die by Suicide* Harvard University Press (2007).



Helping Others:

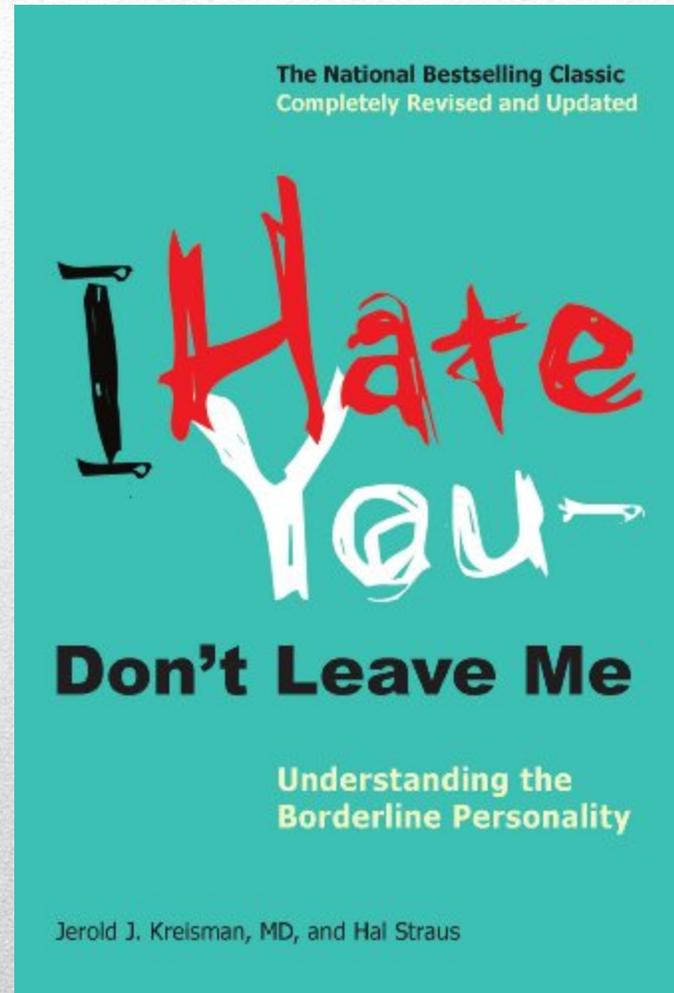
Kreisman, MD *I Hate You – Don't Leave Me: Understanding the Borderline Personality* TarcherPerigee; Revised, Updated edition (2010)

Helping Ourselves:

Haynes, *My Kind of Crazy: Living in a Bipolar World* Booksurge (2009)

Understanding the Issue:

Roth, *Surviving a Borderline Parent: How to Heal Your Childhood Wounds and Build Trust, Boundaries and Self-Esteem* New Harbinger Publications (2004)



# A Final Word on Professionalism

Amateur athletics has “Sportsmanship” as its good.

Teaching has “Learning” as its good.

Medicine is a practice that has “Healing” as its good.

What does the practice of law have as its good if not “Professionalism in the Administration of Justice?”

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## A Final Word on Professionalism

A Professional NEVER utters the words  
“Well, if nothing else, we have title insurance”  
PRIOR to a closing.

It’s not an ethical violation to say that but it  
sure identifies you as unprofessional.

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